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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-182

BENEFICIAL FINANCE COMPANY OF GARY, INC.,
Petitioner,

vs.

DOROTHY ALLEN,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Pursuant to Rule 40(3) of the Rules of The Supreme Court of the United States, respondent is satisfied with petitioner's statements concerning Opinions Below and Jurisdiction found on pages one and two of its Petition.

QUESTION PRESENTED.

Whether this Court should exercise its judicial discretion to review the lower courts' conclusions of law and findings of fact that petitioner's consumer loan disclosure statement is not in "meaningful sequence" as required by the Truth-In-Lending Act.

STATUTES AND REGULATIONS INVOLVED.

In addition to the Statutes and Regulations cited by petitioner at pages two and three of its petition, additional authorities are pertinent to this Court's determination of whether "special and important reasons" exist for the granting of Certiorari.

The Congressional purpose of the Truth-In-Lending Act (Act), and Regulation Z promulgated thereunder, is found at 15 U. S. C. § 1601.

> "The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit."

Pertinent regulations promulgated by the Federal Reserve Board (FRB) through Regulation Z which will assist this Court's judgment are:

Regulation Z, § 226.6(b) (Inconsistent State Requirements) and (c) (additional information).

> (b) "With respect to disclosures required by this Part, state law is inconsistent with the requirements of the Act and this Part . . . to the extent that it
>
> "(1) Requires a creditor to make disclosures different from the requirements of this Part with respect to form, content, terminology, or time of delivery;"
>
> (c) "at the creditor's option, additional information or explanations may be supplied with any disclosure required by this Part, but none shall be stated, utilized, or placed so as to mislead or confuse the customer or contradict obscure, or detract attention from the information required by this Part to be disclosed. Any creditor who elects to make disclosures specified in any provision of State law which, under paragraph (b), of this section, is inconsistent with the requirements of the Act and this Part may
>
> "(2) Make such inconsistent disclosures on the statement on which disclosures required by this Part are made; provided:
>
> "(iii) All inconsistent disclosures appear separately and below a conspicuous demarcation line, and are identified by a clear and conspicuous heading indicating that the statements made thereafter are inconsistent with the disclosure requirements of the Federal Truth in Lending Act."

Certain Indiana statutes raised in issue by petitioner's petition are relevant to the question presented.

Indiana Code, I. C. 1971, 24-4.5-3-107 (a) defines a precomputed loan as:

> "A loan . . . is 'precomputed' if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance."

Indiana Code, I. C. 1971, 24-4.5-3-301 (2) (3) states:

> "The lender shall disclose to the debtor to whom credit is extended with respect to a consumer loan the information required by either this part, *or* the Federal Consumer Credit Protection Act." (Respondent's emphasis).

Indiana Code, I. C. 1971, 24-4.5-3-302 (c) states that a lender:

> "May use terminology different from that employed in this Part if it conveys substantially the same meaning."

STATEMENT OF THE CASE.

Respondent brought suit against the petitioner and alleged numerous violations of the Act and Regulation Z in its loan disclosure statement. The only allegation reached by the trial court, only one violation was required, was that petitioner's consumer loan statement was not in "meaningful sequence."

Therefore, the nature of this case deals with the absence of clarity of disclosures, not the absence of disclosures required by the Act or Regulation.

Essentially, petitioner's Statement of the Case outlines the loan disclosure statement found on pages 24a and 25a of its Appendix. Respondent shall discuss the contents of the disclosure statement and petitioner's Statement of the Case and comments thereon in its argument as to why Certiorari should not be granted to petitioner. First, the factual argument will be set against the current posture of the law on the Truth in Lending Act.

Initially, though, a correction of the petitioner's Statement of the Case is required. The underlying obligation giving rise to this action concerned a $1,769.58 loan, not a $1,750.00 loan as noted by petitioner. The total of 36 monthly payments of $69.00 each is $2,484.00.

The Writ Should Be Denied, the Disclosure Statement, Under the Current State of Law, Is Totally Deficient.

The purpose of the Act is to ensure "the informed use of credit" through "meaningful disclosure of credit terms". "Awareness" is the keynote of the Act. 15 U. S. C. § 1601.

> "The Truth in Lending reflects a transition in congressional policy from a philosophy of 'Let the buyer beware' to one of 'Let the seller disclose'. By erecting a barrier between the seller and the prospective purchaser in the form of hard facts, Congress expressly sought to . . . avoid the uninformed use of credit. 15 U .S C. § 1601." *Mourning* v. *Family Publication Service, Inc.*, 411 U. S. 356, 93 S. Ct. 1652, 1664, 36 L. Ed. 2d 318 (1973).

The need for Congressional protection through such requirements as in issue in the case at bar, "meaningful sequence", was necessitated by lender practices which at times bordered on fraud. *Mourning* v. *Family Publication Service, Inc.*, 411 U. S. 356, 377, 93 S. Ct. 1652, 1664-1665, noted at the time

credit was extended computations about the cost of credit were "often not encouraged by the solicitor or performed by the purchaser". Hence, the need for clarity, information and "meaningful disclosures" of credit terms. The consumer must be protected.

Lower courts have interpreted the Act as a remedial statute to be strictly enforced, *Powers* v. *Sims & Lewis Realtors*, 396 F. Supp. 12 (D. C. Va. 1975), and liberally construed, *Johnson* v. *McCracklin Sturm Ford, Inc.*, 527 F. 2d 257 (3rd Cir. 1975).

The necessity of assumptions on the part of the consumer were meant to be eliminated if the Act was to fulfill its worthy purpose. *Pennino* v. *Morris Kirschan & Co. Inc.*, 526 F. 2d 367 (5th Cir. 1976).

Set against the Congressional purpose and court interpretations, the lower courts found petitioner's disclosure statement severely wanting. Were no Court interpretations existing with only the statutory purpose to guide the courts, the factual content of the disclosure statement itself is sufficient reason for not granting Certiorari.

The Writ Should Be Denied, the Loan Disclosure Statement Is Not in "Meaningful Sequence".

Petitioner has outlined the general content of its disclosure statement in its Statement of the Case. Below respondent will respond and highlight just a few illustrations of how poorly the content of the disclosure statement fails to fulfill the policy of "awareness" of the credit terms, which is in sharp contrast to petitioner's seemingly logical presentation. However, a review of the disclosure statement by this Court is respondent's best argument of why the Appellate and District Courts rejected the statement as being in meaningful sequence.

The Appellate Court utilized Federal Reserve Board (FRB) Public Position Letter No. 780, April 10, 1974, as a guideline

in its determination of the phrase "meaningful sequence". See, page 11a of petitioner's Appendix. From that Letter, the Appellate Court deciphered two elements of "meaningful sequence".

> "Thus, meaningful sequence first requires groupings of logically related terms. Second, meaningful sequence requires that the terms in these groupings be arranged in a logically sequential order emphasizing the most important terms. The Board means this when it speaks of an 'arithmetical progression'." See, page 12a of petitioner's Appendix.

Therefore, contrary to petitioner's assertion, the Appellate Court gave great deference to the FRB's interpretation of meaningful sequence. No conflict exists between the Seventh Circuit and FRB interpretations.

FRB Letter No. 780 also stated, aptly important here as will be shown below, that the lender should place disclosure items:

> ". . . in reasonable proximity to each other so that the customer will not be required to search for any arithmetical items which should logically follow a previous one."

Given the requirements of logical groupings and logical sequential order the following is found in petitioner's disclosure statement.

First, the Appellate Court found no continuity in the descriptive disclosure regarding security of the loan. "Nature of Security" is found in a middle column of the page between "Net balance-Prior Loan" and "Annual Percentage Rate". That column deals with a prior loan, not the present loan in question that the consumers are interested in. It seems logical that the nature of security of the present loan be in a grouping with the current, not past, loan.

To determine what security the consumer is putting up he is told that it is "01". "01" is not explained anywhere on the disclosure statement. This is no wonder since petitioner tells us that "01" is *"A code number, intended primarily for internal use and not for disclosure to the borrower . . . the nature of*

the security is disclosed to the borrower *at another place* on the form". Page 5, footnote 2 of the petitioner's petition. (Respondent's emphasis).

Since the code number "01" is for the lender's benefit and tells the consumer nothing it has no business in the statement at all and is expressly prohibited by Regulation Z, § 226.6 (c) above.

To determine the nature of his security a consumer must go from the middle of the page to the upper right hand box labelled "Security", which may or may not be the same thing as "Nature of Security". The consumer finds his "furniture" is to be security. Yet, to be sure, he must read the fine print outside and below the box to discover that all future "consumer goods" at his residence are encumbered. That is, if the consumer discovers and reads print which is not in the box labelled "security" in the first place.

The consumer will also find that "security" is continued from the upper right hand side of the page to the lower, middle-left of the page. Here "Security" is "(Cont.)".

None of this meets the FRB requirements of logical groupings, logical sequence and the prohibition against "searching" for related items.

Second, petitioner tells us that "precomputed charges" and "finance charge" ($714.42) in the left-hand column of the page are "equivalents". Page 4, footnote 1, petitioner's petition. Given petitioner's contention of a subtractional loan format, one does not subtract the equivalent figures of $714.42 twice. See, page 18a of petitioner's Appendix for Appellate Court comments.

Further, Indiana does not require the term "precomputed charges" to be used on any disclosure statement. See above, I. C. 1971, 24-4.5-3-107(a). Indiana does allow "finance charge" phraseology to be used in place of "precomputed charges" if they convey the same meaning which petitioner claims they do. See above, I. C. 1971, 24-4.5-3-302(c). There-

fore, such additional information is excess baggage positioned in a place where it is expressly prohibited. Such gratuitous information is in violation of Regulation Z, § 226.6(b) and (c), above.

Parenthetically, since it is mentioned in petitioner's petition, it should be noted that Indiana defines a "precomputed loan" as principal plus finance charge, I. C. 1971, 24-4.5-3-107(a), above, and not just as a "finance charge" as petitioner asserts. That terminology is not only technically incorrect, but again out of place. Indiana specifically defers its statutory disclosure terminology to that used in the Act. I. C. 1971, 24-4.5-3-301(2)(3), above. Further, to be internally consistent "finance charge" in the statement should be found in both the present and prior loan columns, but is not.

Third, an important Act requirement, the "Annual Percentage Rate" (APR) is hidden in a column treating rebates of a prior loan, center of the page, not the current loan transaction. It seems obvious that a consumer could easily relate the APR to the "Net Balance-Prior Loan" directly above it, rather than to the present "Amount Financed", $1,769.58, in another column, to the left and several lines up. The APR as presently located between "Net Balance-Prior Loan" and "Default Charge" has no logical relationship to those items.

Fourth, the Appellate Court applied FRB Letter No. 780 to the sequence of lines that are numbered, not all lines being numbered. Letter 780 requires that "arithmetical items which should logically follow a previous one" be placed "in reasonable proximity to each other so that the customer will not be required to search for the items." This is just common sense.

Yet, in the left hand column of the disclosure statement treating the present loan line 1 is followed by line 3. Line 2 is over in a middle column treating a prior loan.

Lines 3 through 9 are on the left hand side of the statement with lines 10 through 14 across the page on the right hand side. The eye and mind must search for the relationships between the numbered lines.

Fifth, petitioner continually asserts its disclosure statement as one in a "subtractional format". The Appellate Court has noted the lack of internal consistency of that contention at footnote 5 of its Opinion, page 18a of petitioner's Appendix. In addition, in the introduction of Statement of Disclosure one finds "the *sum* of the installments" (Respondent emphasis). Before the consumer reaches the figures he is supposed to subtract he is conditioned to add.

To determine the amount of money the consumer takes away with him, "cash or check delivered to borrowers," he must add, *i.e.* "Line 1 less *sum* of lines 2 through 14" (Respondent's emphasis). If there is a "subtractional format" as maintained by petitioner at page 6 of its petition, there is instead evidence at two locations of an additional format.

Finally, if as petitioner maintains, the net balance of a refinanced loan and the amount of the proceeds of that loan are figures not required to be disclosed by Regulation Z, page 13 of petitioner's petition, then such disclosures are in violation of Regulation Z, § 226.6(c)(2)(iii), above.

Based upon the above facts, matters related to this Court in petitioner's petition, and the lower Courts' opinions, certiorari should be denied. It should be denied because the Appellate and District Courts are correct in their rejection of "meaningful sequence" in this disclosure statement.

The Writ Should Be Denied, the Appellate Court Has Not Found the Substraction Format per se Illegal.

Both petitioner and *Amicus* contend that in the Seventh Circuit the use of a subtractional format in a loan disclosure statement is *per se* illegal. Such is not the case.

The Appellate Court stated, page 19a of petitioner's Appendix:

> "The disclosure form is for the borrower and must be presented in a conceptual framework so a borrower can easily comprehend. The subtractional method does not provide such a framework."

That statement is the basis of their contention. However, the Court is clearly limiting its holding to the narrow facts of this case. The Seventh Court does not require an additional format as opposed to a subtractional format. The Court stated, page 14a, of petitioner's Appendix:

> "Although *the requirements of meaningful sequence mandate no one arrangement and can be fulfilled in many ways,* whatever form is chosen must always reflect the dominant purpose of the Truth in Lending Act." (Respondent's emphasis.)

At page 13a of petitioner's Appendix the Court stated:

> "The requirements of meaningful sequence cannot be applied mechanically or rigidly."

At page 14a of petitioner's Appendix, the Court quotes from FRB Letter No. 545, November 4, 1971, CCH Consumer Credit Guide, Paragraph 30, 759 (transfer binder):

> "It would seem that there are a multitude of ways by which the creditor could meet the requirements of the Regulation."

The Seventh Circuit is not in conflict with any other reported decision on meaningful sequence, FRB position letter or other authority. A recent FRB letter cited at page 29a of petitioner's Appendix is not in conflict with the Seventh Circuit's decision. If one wishes to read the letter as "temperately but unmistakably" correcting the Court of Appeals, so be it. Yet, the letter clearly states that only "some" entities have interpreted *Allen* so restrictively as petitioner and *Amicus* do. The letter found on page 29a of the Appendix does not reject the *Allen* decision on *its facts.*

The FRB form noted at page 28a of petitioner's Appendix may be in a subtractional format, an issue that is a debatable fact, but it is clearer than petitioner's statement. And it is petitioner's statement that has been found wanting, not the FRB's.

The fact that other financial institutions use a subtractional format is irrelevant. The arguments above apply to these entities as

well. They have nothing to concern themselves over if *Allen,* as the FRB letter on page 29a implicitly does, is read restrictively within the facts of the case at bar.

Certiorari should be denied because no important question is at issue with regard to use of a subtractional format in disclosure statements.

The Writ Should Be Denied, Speculation of Future Suits or Damages Is Not a Factor Requiring Review.

Petitioner, and *Amicus,* contend that if the matter of whether or not the subtraction format is illegal is not "settled" petitioner and other financial institutions will be subjected to numerous and debilitating actions at law. Such an argument is pure speculation and is not a ground for review by Certiorari.

As shown above, the Seventh Circuit has not "condemned" the subtractional format. It has found this particular subtractional format in question as severely wanting. No rigid, mechanical application is mandated.

Though other finance companies may or may not use the subtractional format their disclosure statements are not at issue. If their format is anything like petitioner's, then indeed they must be worried and be required to put their disclosures in meaningful sequence. A subtractional format does not *per se* invoke liability.

If some potential plaintiff does bring a class action against petitioner damages and a statute of limits of one year severely limit petitioner's exposure to the lesser of $100,000 or 1 percent of the company's net worth with one year of the date of the transaction. 15 U. S. C. § 1640. Such an action is a bar to all other possible actions.

It should be noted that petitioner exacts from its subsidiaries a uniform method of doing business with centrally prepared and pre-printed forms. Such centralized authority will result in a uniform impact from the *Allen* decision. This is a price one may pay for centralized management.

CONCLUSION.

A Writ of Certiorari should not issue in this case. No conflict exists between the lower Courts' opinions and any other reported Appellate or District Courts' decisions or FRB interpretation.

No important national question is presented since the Seventh Circuit has not outlawed the subtractional method of disclosure *per se*. The case is a narrow holding based on the disclosure statement in front of two federal courts.

No important question of federal law need be settled since the Seventh Circuit applied the current posture of the law to the facts of the case at bar. The Act and Regulation Z are to be broadly and liberally construed in view of the remedial nature of the Act.

For all the authorities and reasons cited above, the petition should be denied.

Respectfully submitted,

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